

Thomas R. Rask, III, OSB No. 934031
trask@kelrun.com

Susan T. Alterman, OSB No. 870815
salterman@kelrun.com

James D. O'Donnell, OSB No. 171284
jodonnell@kelrun.com

Kell, Alterman & Runstein, L.L.P.
520 SW Yamhill, Suite 600
Portland, OR 97204
Telephone: 503/222-3531
Fax: 503/227-2980

Attorneys for Plaintiff *PeaceHealth*

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

EUGENE DIVISION

PEACEHEALTH, a Washington non-profit
corporation,

Case No. 6:19-cv-1648

Plaintiff,

COMPLAINT

v.

(Unfair Competition, Section 43(a) Lanham
Act (15 U.S.C. § 1125); Injunctive Relief)

HEALTH NET HEALTH PLAN OF OREGON,
INC., an Oregon corporation; and TRILLIUM
COMMUNITY HEALTH PLAN, INC., an Oregon
corporation,

DEMAND FOR JURY TRIAL

Defendants.

COMPLAINT

Plaintiff PeaceHealth (“**PeaceHealth**”) brings this Complaint asking that the Court enjoin Health Net Health Plan of Oregon, Inc. (“**Health Net**”) and Trillium Community Health Plan, Inc. (“**Trillium**”) (collectively, “**Defendants**”) from misrepresenting to insurance brokers and the public that PeaceHealth will be an in-network provider for Health Net and Trillium Medicare

Advantage plans in 2020. Plaintiff seeks immediate injunctive relief. In support of its claims, Plaintiff alleges as follows:

NATURE OF THE ACTION

1. This lawsuit arises from Defendants' ongoing and willful misrepresentations and misstatements to insurance brokers and the public about the status of PeaceHealth's participation in Health Net and Trillium Medicare Advantage health insurance plans for 2020. Open enrollment starts on October 15, 2019 for plans that will be effective on January 1, 2020. PeaceHealth advised Defendants in April 2019 that it would not participate in Medicare Advantage plans for 2020 and has repeatedly confirmed that fact to Defendants over the past seven months. Despite this clear notice, Defendants wrongfully continue to publish misleading statements about PeaceHealth's participation in those Medicare Advantage plans. Defendants' willful misconduct is creating confusion in the marketplace for health insurance, which has material, real life consequences for the many customers who need insurance plans that include PeaceHealth. Those customers, and the brokers who sell insurance to them, are being confused by Defendants' misrepresentations, and may buy Defendants' health insurance plans because they have been deliberately misled by Defendants into thinking they are getting PeaceHealth coverage when in fact that coverage is not included.

2. PeaceHealth seeks immediate injunctive relief, and an award for damages, fees, and costs.

PARTIES

3. PeaceHealth is a Washington non-profit corporation with its principal place of business in Vancouver, Washington. PeaceHealth is a large healthcare provider that offers care to patients in Washington, Oregon, and Alaska. PeaceHealth has approximately 16,000 caregivers, a medical group practice with more than 1,100 providers, and 10 medical centers serving both urban and rural communities throughout the Northwest.

4. Health Net is an Oregon corporation with its principal place of business in Tigard, Oregon. As a healthcare insurance provider licensed in Oregon and Washington, Health Net sells a wide spectrum of healthcare insurance plans for individuals and families, employers, and Medicare insureds. Health Net sells Medicare Advantage health insurance plans to many insureds in Oregon and Washington.

5. Trillium is an Oregon corporation with its principal place of business in Eugene, Oregon. As a healthcare insurance provider licensed in Oregon, Trillium sells Medicare Advantage insurance plans to many insureds in Oregon.

JURISDICTION AND VENUE

6. PeaceHealth's claim for relief pursuant to the Lanham Act arises under 15 U.S.C. § 1125.

7. This Court has jurisdiction over PeaceHealth's Lanham Act claim for relief pursuant to 28 U.S.C. § 1331.

8. This Court also has jurisdiction under 28 U.S.C. § 1332 because there is complete diversity between PeaceHealth and Defendants, and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

9. Defendants are subject to personal jurisdiction in Oregon pursuant to Oregon Rule of Civil Procedure 4A(3) because Defendants regularly do business and are incorporated in Oregon.

10. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because all or a substantial part of the events giving rise to the claims alleged herein took place in the District of Oregon, and because Trillium and Health Net are subject to personal jurisdiction in Oregon. Venue is proper in this division under LR-3-2 because a substantial part of the events giving rise to the claim occurred in Lane County, Oregon.

GENERAL ALLEGATIONS

11. PeaceHealth owns and operates hospitals and other healthcare services in the Northwest, including Oregon and Washington. PeaceHealth is the largest health care provider in Lane County, Oregon and Clark County, Washington. Its mission is to promote personal and community health, relieve pain and suffering, and treat each person in a loving and caring way. It is committed to exceptional medicine and compassionate care.

12. Trillium offers Medicare Advantage health insurance plans to eligible individuals in Oregon, and Health Net offers Medicare Advantage health insurance plans to eligible individuals in Oregon and Washington. Trillium and Health Net are offering Medicare Advantage health insurance plans for the 2020 plan year (collectively, the “**2020 MA Plans**”). Coverage under the 2020 MA Plans becomes effective on January 1, 2020.

13. The 2020 Medicare Open Enrollment Period for coverage to be effective on January 1, 2020 begins on **October 15, 2019** and closes on December 7, 2019 (“**Open Enrollment**”). The Open Enrollment period marks the time each year when eligible individuals may make unrestricted changes to their Medicare health insurance coverage options.

14. Medicare eligible individuals participating in Open Enrollment consider many factors when selecting the Medicare health insurance plan that best meets their needs. One of the most significant factors is which healthcare providers they will be able to access during the plan year because those providers are “in network.” “In network” providers are pre-approved to provide health care service to persons insured under a given insurance plan at agreed rates of payment.

15. During Open Enrollment, eligible individuals may purchase and enroll in the 2020 MA Plans offered by Health Net and Trillium.

16. On or about June 1, 2004, PeaceHealth and Health Net entered into a provider participation agreement (the “**Health Net Agreement**”) under which PeaceHealth agreed to

provide services to Health Net’s Medicare Advantage health plan enrollees at various PeaceHealth hospitals and medical groups. Under the Health Net Agreement, PeaceHealth was one of Health Net’s in-network providers. As an in-network provider, PeaceHealth provided care to Medicare enrollees each year through Health Net Medicare Advantage plans at agreed rates for payment.

17. On or about August 1, 2012, PeaceHealth and Trillium entered into a Hospital Services Agreement and Clinic Provider Agreement (the “**Trillium Agreement**”) under which PeaceHealth agreed to provide services to Trillium’s Medicare Advantage health plan enrollees at various PeaceHealth hospitals and medical groups. Under the Trillium Agreement, PeaceHealth was one of Trillium’s in-network providers. As an in-network provider, PeaceHealth provided care to Medicare enrollees each year through Trillium Medicare Advantage plans at agreed rates for payment.

18. The terms of the Trillium Agreement and the Health Net Agreement, including reimbursement rates, were renegotiated annually (the “**In-Network Agreements**”).

19. PeaceHealth decided to not renew its In-Network Agreements with Health Net and Trillium for 2020 MA Plans because renewal was not consistent with PeaceHealth’s goals to improve care delivery, improve overall patient experience, and decrease administrative burdens.

20. On **April 16, 2019**—six months before the start of Open Enrollment—PeaceHealth notified Health Net and Trillium by telephone of its intent to exercise its contractual right to terminate the In-Network Agreements effective January 1, 2020.

21. By letter dated **April 16, 2019**, PeaceHealth notified Health Net of PeaceHealth’s termination of the Health Net Agreement, effective January 1, 2020, at the following PeaceHealth hospitals and medical groups in Oregon and Washington:

- Southwest Medical Center;
- Southwest Medical Center Medical Group;

- PeaceHealth Medical Group Southwest;
- Sacred Heart Medical Center, University District and RiverBend;
- Cottage Grove Medical Center;
- PeaceHealth Medical Group Eugene, Sacred Heart Physicians, PHMG Siuslaw, PHMG Cottage Grove, PHMG Dexter;
- Peace Harbor Medical Center;
- St. Johns Medical Center; and
- PeaceHealth Medical Group Longview.

22. By letter dated **April 16, 2019**, PeaceHealth also notified Trillium of PeaceHealth's termination of the Trillium Agreement, effective January 1, 2020, at the following PeaceHealth hospitals and medical groups in Oregon:

- Sacred Heart Medical Center, University District and RiverBend;
- Cottage Grove Medical Center;
- PeaceHealth Medical Group Eugene, Sacred Heart Physicians, PHMG Siuslaw, PHMG Cottage Grove, PHMG Dexter; and
- Peace Harbor Medical Center.

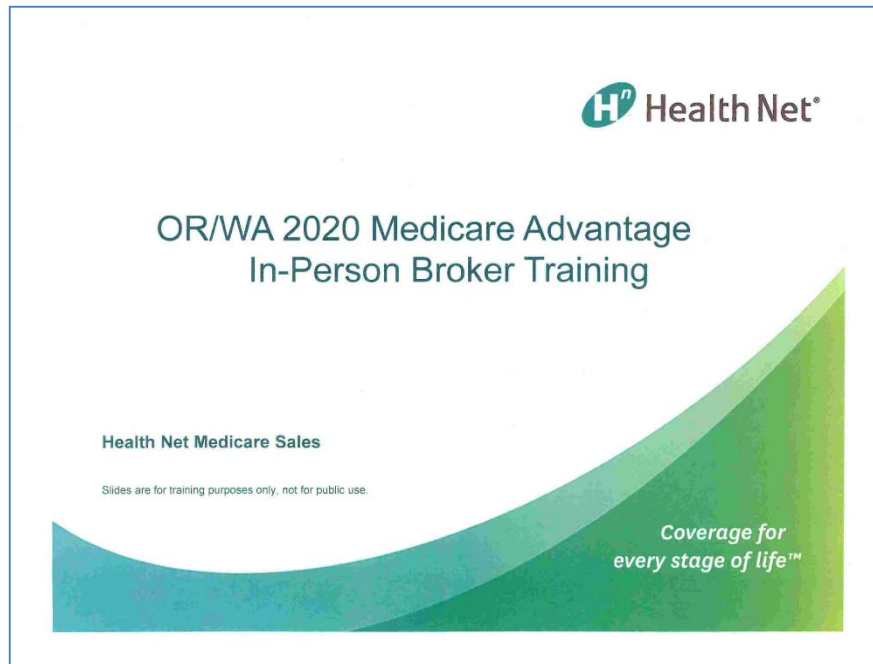
23. On or about **June 18, 2019**—four months before the start of Open Enrollment—PeaceHealth executives met with representatives from Health Net and Trillium to discuss other operational issues. PeaceHealth reiterated to Health Net and Trillium that PeaceHealth will not be an in-network provider under the 2020 MA Plans.

24. On or about **July 24, 2019**—three months before the start of Open Enrollment—PeaceHealth executives spoke with representatives of Health Net and Trillium by telephone to discuss other operational issues unrelated to the In-Network Agreements. PeaceHealth again confirmed that PeaceHealth would no longer be an in-network provider under the 2020 MA Plans.

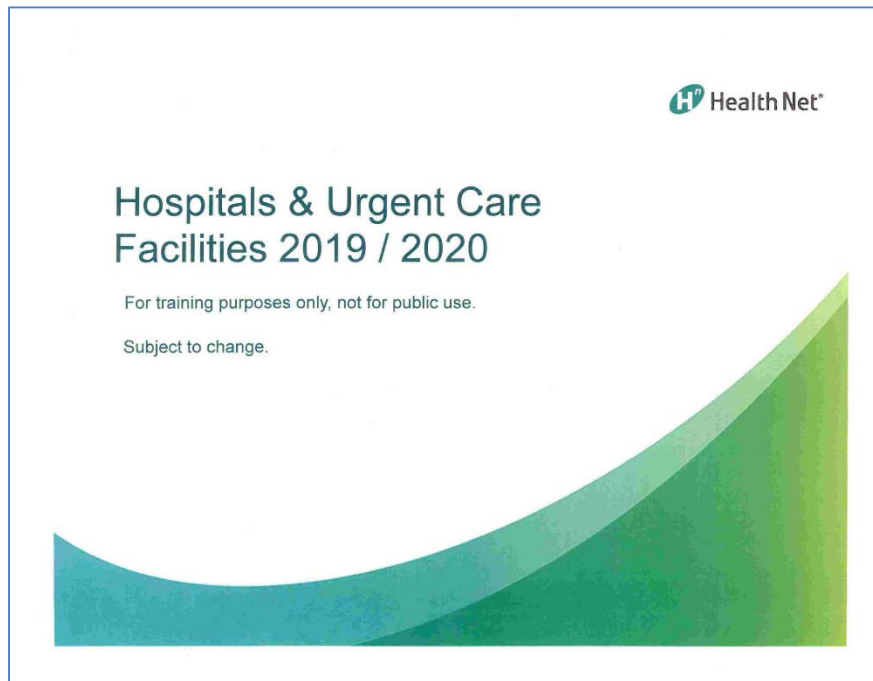
25. In late August or early September 2019, the president of Health Net and Trillium was replaced by a new president.

26. In early **September 2019**—about six weeks before the start of Open Enrollment—Health Net held a meeting in Lane County with about 100 brokers. In that meeting, Health Net misrepresented to the brokers that PeaceHealth would be in network under Health Net’s 2020 MA Plans.

27. On or about **September 24, 2019**—three weeks before the start of Open Enrollment—PeaceHealth learned that Health Net’s **2020** Broker Training Manual still to identifies PeaceHealth as an in-network provider for Health Net’s 2020 MA Plans.¹



¹ As demonstrated by the title page to Health Net’s Broker Training Manual, the training is intended to educate brokers on Health Net’s 2020 MA plans offered in Oregon and Washington. Yet, on the page below within the Broker Training Manual, Health Net causes further confusion to brokers when it refers to “Hospitals & Urgent Care Facilities **2019 / 2020**” to identify in-network providers under those plans.



In-Network Hospitals and Urgent Care Facilities by County Health Net®		
<p><u>BENTON</u> Samaritan Urgent Care, Corvallis Good Samaritan Hospital</p> <p><u>CLACKAMAS</u> Legacy Gohealth, Johnson Creek AFC Urgent Care Concentra Urgent Care, Lake Oswego Urgent Care Oregon, Molalla Legacy Gohealth Oregon City Sandy Family Practice UC</p> <p><u>CLARK (Washington)</u> Legacy Gohealth, Camas Legacy Gohealth Cascade Park SW Washington Urgent Care Urgent Care at Salmon Creek Legacy Salmon Creek Hospital PeaceHealth Southwest Medical Center</p> <p>10/8/2019</p>	<p><u>COOS</u> Bay Area Hospital Coquille Valley Hospital</p> <p><u>CROOK, DESCHUTES, JEFFERSON</u> Bend Memorial Clinic Urgent Care Mountain Medical Group, LLC Family Choice Urgent Care, LLC Redmond Immediate Healthcare St. Charles Medical Center Pioneer Memorial Hospital</p> <p><u>DOUGLAS</u> Canyonville Urgent Care Lower Umpqua Hospital Mercy Medical Center</p> <p><u>JACKSON</u> Asante Ashland Community Hospital Medford Medical Clinic Valley Immediate Care, LLC Asante Rogue Regional Medical Center Providence Medford Medical Center</p>	<p><u>JOSEPHINE</u> Asante Urgent Care Valley Immediate Care Asante Three Rivers Medical Center, LLC</p> <p><u>LANE</u> PeaceHealth PeaceHealth Urgent Care PeaceHealth Urgent Care West Eugene Urgent Care Sacred Heart Hospital Peace Harbor Hospital McKenzie Willamette Hospital Sacred Heart Medical Center at Riverbend Thurston Urgent Care</p> <p><u>LINN</u> Geary Street Urgent Care Albany General Hospital Samaritan Lebanon Community Hospital Samaritan Urgent Care, Lebanon</p>

28. On or about **September 30, 2019**—two weeks before the start of Open

Enrollment—PeaceHealth executives were introduced by telephone to the new president of Health Net and Trillium. Because Health Net and Trillium were still incorrectly representing to brokers that PeaceHealth would be in-network under the 2020 MA Plans, PeaceHealth informed the new president that PeaceHealth would be sending a letter demanding that Health Net and Trillium stop falsely representing PeaceHealth as in-network under the 2020 MA Plans.

29. On **October 1, 2019**—two weeks before the start of Open Enrollment—PeaceHealth learned that Health Net and Trillium’s websites were still misrepresenting that PeaceHealth would be an in-network provider under their 2020 MA Plans.

30. Also on **October 1, 2019**—with Open Enrollment just two weeks away—PeaceHealth sent Health Net and Trillium follow-up letters (the “**October 1 Letters**”). The October 1 Letters referenced the termination notices sent on April 16, 2019 and advised Health Net and Trillium once again that, as of January 1, 2020, PeaceHealth would no longer be in-network to patients enrolled in the 2020 MA Plans.

31. The October 1 Letters instructed Health Net and Trillium to stop misrepresenting that PeaceHealth would be an in-network provider under the 2020 MA Plans. They directed each company to “communicate PeaceHealth’s non-contracted status clearly to your members, agents, and brokers.” They also directed each company to clarify any false, inaccurate, or potentially misleading statements or materials provided to their members or brokers and to clearly indicate that PeaceHealth will not be in-network under the Trillium and Health Net 2020 MA Plans beginning January 1, 2020.

32. On or about **October 2, 2019**—less than two weeks before the start of Open Enrollment—PeaceHealth sent several letters to health insurance brokers in Lane and Clark counties notifying them that PeaceHealth would no longer an in-network provider under the 2020 MA Plans.

33. On October 4, 2019, a PeaceHealth executive spoke by telephone with the new

president of Health Net and Trillium to confirm that Health Net and Trillium did not have questions or concerns about the October 1 letters. The president of Health Net and Trillium requested a brief meeting to meet the new president of PeaceHealth. PeaceHealth agreed but stated unequivocally that PeaceHealth would not be in-network under the 2020 MA Plans and that PeaceHealth would not be discussing the matter further.

34. On **October 8, 2019**—one week before the start of Open Enrollment—Health Net and Trillium held a morning meeting in Lane County with about 40 brokers to discuss PeaceHealth’s participation in the 2020 MA Plans (the “**Broker Meeting**”). One of the brokers informed PeaceHealth that, during the Broker Meeting, Health Net and Trillium made representations that left the broker with the impression that there was still an opportunity for Health Net and Trillium to resolve the issue relative to the status of the 2020 MA Plans. Health Net and Trillium told the brokers that they would be meeting with PeaceHealth that afternoon to resolve the issue and that Health Net and Trillium would inform the brokers of the result of the meeting with PeaceHealth.

35. From October 2, 2019 to October 8, 2019, PeaceHealth was contacted by more than 35 brokers with questions about the representations by Health Net and Trillium regarding PeaceHealth status under the 2020 MA Plans. The consistent message from the brokers was that Health Net and Trillium were not acknowledging that PeaceHealth will not be in-network under the 2020 MA Plans. Health Net and Trillium falsely represented to brokers that Health Net and Trillium were in discussions with PeaceHealth regarding PeaceHealth’s contract status for the 2020 MA Plans.

36. At the afternoon meeting on October 8, 2019 between executives of PeaceHealth and Health Net and Trillium, PeaceHealth executives again stated unequivocally that PeaceHealth would not be an in-network provider under the 2020 MA Plans.

37. On **October 9, 2019**—six days before the start of Open Enrollment—PeaceHealth

sent Health Net and Trillium a final cease and desist letter, demanding they stop misrepresenting to brokers and the general public that PeaceHealth will be in-network under the 2020 MA Plans (“**Final Demand Letter**”).

38. On **October 11, 2019**—just four days before the start of Open Enrollment—Health Net and Trillium had still not informed the brokers from the Broker Meeting of the results of the meeting on October 8th with PeaceHealth, or otherwise acted to correct the misimpression they had deliberately created.

39. Despite being made aware in **April 2019**—six months before the start of Open Enrollment—that PeaceHealth was terminating its contracts with Health Net and Trillium, and despite having been reminded of that termination in subsequent meetings, phone calls, and by the October 1 Letters, Health Net and Trillium continue to allow brokers and the general public in both Oregon and Washington to believe that there may still be an opportunity for Health Net and Trillium to resolve the issue relative to the status of the 2020 MA Plans.

40. Medicare rules and regulations set “network adequacy” standards. Under those standards, Medicare Advantage plans must contract with a certain number of providers of each service type.

41. On information and belief, Health Net and Trillium will be out of compliance with regulated network adequacy standards in Lane County when PeaceHealth is no longer an in-network provider under their 2020 MA Plans beginning January 1, 2020. On information and belief, Health Net and Trillium intend to cause damage to PeaceHealth by allowing thousands of insureds to believe, incorrectly, that PeaceHealth will be in network under the 2020 plans, expecting that the reputational harm, bad press, and threat of litigation from disgruntled Medicare Advantage insureds will pressure PeaceHealth to enter into a new contract with Health Net and Trillium. Of course, the true victims of Trillium’s and Health Net’s scheme will be the thousands of innocent insureds who sign-up for Trillium’s and Health Net’s 2020 MA Plans

because they have been misled to believe that PeaceHealth will be an in-network provider under those plans.

42. As of the date of this filing, Health Net and Trillium have not responded to PeaceHealth's Final Demand Letter. PeaceHealth continues to field questions from confused brokers and current PeaceHealth patients in Oregon and Washington asking if PeaceHealth will be an in-network provider under the 2020 MA Plans. As of the date of this filing, Health Net and Trillium continue to falsely represent on their websites that PeaceHealth will be an in-network provider under their 2020 MA Plans, causing substantial confusion in the health insurance marketplace.

43. Open Enrollment **begins tomorrow, October 15, 2019.**

FIRST CLAIM FOR RELIEF

(Unfair Competition/False Advertising Under § 43(a) of the Lanham Act, 15 U.S.C. § 1125)

44. PeaceHealth incorporates by reference each of the foregoing allegations.

45. Defendants each use in commerce words, terms, and names on their websites, promotional materials, and in broker training materials that incorrectly and wrongfully designate, describe, and represent PeaceHealth as an in-network provider under Defendants' 2020 MA Plans.

46. Defendants' websites, promotional materials, and statements are directed to potential customers, including Medicare eligible individuals in Oregon and Washington, and are intended to unlawfully associate Defendants with PeaceHealth under Defendants' 2020 MA Plans in the active pursuit of those Oregon and Washington-based customers. In so doing, Defendants are unlawfully capitalizing on PeaceHealth's goodwill, reputation, and market position in the healthcare marketplace.

47. PeaceHealth is not an in-network provider under Defendants' 2020 MA Plans, beginning January 1, 2020.

48. Defendants' designations, statements, descriptions, and representations are false or misleading and likely to cause confusion, mistake, or deception as to the affiliation, connection, or association between Defendants' 2020 MA Plans and PeaceHealth as an in-network provider in violation of 15 U.S.C. § 1125(a).

49. PeaceHealth is being damaged, and is likely to be damaged, by such acts, as are thousands of innocent persons who may sign up for Defendants' 2020 MA Plans because they have been willfully misled into believing that PeaceHealth will be an in-network provider under those plans.

50. PeaceHealth is entitled to injunctive relief in accordance with 15 U.S.C. § 1125(a) and 1116, as well as all available monetary damages in an amount to be proven at trial in accordance with 15 U.S.C. §§ 1125(a), 1117(a), and 1118.

SECOND CLAIM FOR RELIEF

(Injunctive Relief)

51. PeaceHealth incorporates by reference each of the foregoing allegations.

52. PeaceHealth has been and will be injured by Defendants' intentional misrepresentations about PeaceHealth's in-network status to the general public, unwitting potential purchasers of Defendants' 2020 MA Plans, and affected brokers. PeaceHealth has expended significant resources attempting to correct Defendants' repeated misrepresentations.

53. Defendants continue to make misleading and false statements that represent PeaceHealth as an in-network provider under Defendants' 2020 MA Plans, despite repeated demands by PeaceHealth to stop making such false statements.

54. PeaceHealth is suffering and will continue to suffer irreparable harm caused by Defendants' intentional misrepresentations to the public and to brokers that PeaceHealth is an in-network provider under Defendants' 2020 MA Plans. Defendants have already caused confusion in the marketplace and damage to PeaceHealth's reputation. Beginning on October 15, 2019,

thousands of customers will enroll in Defendants' 2020 MA Plans because they have been misled to believe that PeaceHealth will be an in-network provider under those plans. For patients seeking emergency services, which PeaceHealth is legally required to provide, the patients will receive treatment. However, those out-of-network patients may have to pay more when they receive their medical bill. For patients seeking non-emergency services, PeaceHealth will not accept these patients and inform them that they are not actually accepted under their Health Net and Trillium MA Plans. In either circumstance, the patients will suffer substantial cost and expense, and be left frustrated and angry at PeaceHealth. Not only will PeaceHealth have to divert resources to explaining to these consumers that the information they had received from Health Net and Trillium was not true, PeaceHealth's reputation and goodwill will also be collaterally damaged.

55. Unless Defendants are enjoined, PeaceHealth will suffer irreparable harm far in excess of \$75,000, in the form of damage to its goodwill, damage to its reputation, frustration of its mission to provide exceptional care, financial harm to its patients, and diversion of its resources. While damage has already been done by Defendants' misrepresentations, an injunction will prevent consumers from actually purchasing policies based on false information, which would dramatically increase the harm to PeaceHealth and to the public.

56. PeaceHealth has no plain, speedy, or adequate remedy at law to prevent Defendants from continuing to make misrepresentations about PeaceHealth's status under Defendants' 2020 MA Plans.

57. PeaceHealth has made significant attempts to stop Defendants from misrepresenting PeaceHealth's non-contracted status to brokers and to the public before Open Enrollment begins on October 15, 2019.

58. PeaceHealth is entitled to temporary, preliminary, and permanent injunctive relief (1) restraining Defendants from making false statements and misrepresentations as to

PeaceHealth's status under Defendants' 2020 MA Plans; (2) requiring Defendants to correct their misinformation by publishing on their websites and issuing a press release stating unequivocally that Defendants' 2020 MA Plans open to Medicare Advantage patients from and after January 1, 2020 will not include PeaceHealth as a contracted/in-network provider; and (3) requiring Defendants to clearly disclose to all persons who sign-up for their 2020 MA Plans that the plans do not include PeaceHealth as an in-network provider.

PRAYER FOR RELIEF

WHEREFORE, PeaceHealth prays for judgment against Defendants and requests the Court to grant relief as follows:

59. A jury trial to determine the factual questions raises herein;
60. That the Court assume jurisdiction over Plaintiff's claims;
61. That the Court enter an order for temporary, preliminary, and permanent injunctive relief prohibiting Defendants from making misrepresentations as to PeaceHealth's non-contracted status under Defendants' 2020 MA Plans, ordering Defendants to publish on their websites and issue a press release stating unequivocally that Health Net and Trillium 2020 MA Plans open to Medicare Advantage patients from and after January 1, 2020 will not include PeaceHealth as a contracted/in-network provider, and requiring Defendants to clearly disclose to all persons who sign-up for their 2020 MA Plans that the plans do not include PeaceHealth as an in-network provider;
62. An award for compensatory damages in an amount to be determined at trial, attorney fees, costs, and disbursements under 15 U.S.C. §§ 1125, 1117, and 1118;
63. Post-judgment interest at the highest rate allowed by law from the date of entry of judgment until paid in full; and
64. All other relief as the interests of justice require.

DATED this 14th day of October, 2019.

KELL, ALTERMAN & RUNSTEIN, L.L.P.

s/ Thomas R. Rask, III

Thomas R. Rask, III, OSB No. 934031

trask@kelrun.com

Susan T. Alterman, OSB No. 870815

salterman@kelrun.com

James D. O'Donnell, OSB No. 171284

jodonnell@kelrun.com

520 SW Yamhill Street, Suite 600

Portland, OR 97204-1329

Telephone: (503) 222-3531

Facsimile: (503) 227-2980

Attorneys for *PeaceHealth*